IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4293 of 1994

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SHRIMANT RANJITSINH P.GAEKWAD - Petitioner(s)
Versus
STATE OF GUJARAT - Respondent(s)

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Appearance :
MR PC KAVINA for Petitioner(s) : 1, 1.2.1, 1.2.2, 1.2.3,1.2.4
MR LR PUJARI, AGP for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 01/03/2007

ORAL JUDGMENT

1. Petitioner – Rajmata Shantadevi Pratapsinhrao Gaekwad, is before this Court throwing

challenge to the orders passed by the Mamlatdar, confirmed by the Deputy Collector and approved by the Gujarat Revenue Tribunal in Ceiling matter where under after rejecting the objections raised by the petitioner, 10 Acres and 25 Gunthas land was declared surplus.

2. Mr. Kavina, learned counsel for the petitioners submits that from entry no. 99 of the register maintained by Talati, it would appear that the orders were passed in NA 44/1 on 6.1.54 in respect to the land of survey no. 429 and if the land is shown to be non-agricultural land, provisions of the Gujarat Agricultural Lands Ceiling Act, 1960 would not be applicable. Referring to Section-2 [6] which defines “class of land” and Section 2[17] which defines “land”, it is submitted that the land if is not cultivable, is not used for agricultural operations or is registered as non-agricultural land, then the provisions of Section 3[c] of the Act would immediately apply and the land would stand exempted from the operation of the Act. It is also submitted by him that the petitioner

made an application to the concerned Collector for supplying certified copy of the order dated 6.1.54 rendered in NA 44/1, but the Collector showed his inability stating that the records were old and had been destroyed. His submission is that the register maintained by the Talati can be used as secondary evidence in favour of the petitioner and this Court must hold that the lands were exempt from the operation of the Act.

3. Shri L.R. Pujari, learned AGP for the State, combating the said arguments submitted that from the order passed by the Mamlatdar, it would clearly appear that various survey numbers were recorded as non-agricultural land and the petitioner did not file orders enabling her to exemption. His submission is that the petitioner did not show to the Court or could not even convince the authorities that after obtaining non-agricultural permission, the petitioner ever used the land for non-agricultural operations. His submission is that registration of the land as non-agricultural land would not be sufficient to attract Section 3[c] of the Act if the land

is under cultivation and was used, or even if the land is barren, but is still cultivable. His submission is that in the year 1976, when forms were to be filled, the petitioner knew well that the order granting non-agricultural permission would be required to be filed, but she did not care to obtain the said order and file the same, because, by that time, period of 30 years had not expired and the records were available with the Collectorate or Mamlatdar. His submission is that secondary evidence cannot be accepted just for the sake of submission, but it is to be proved like any other document in accordance with law.

4. Section 2[6] of the Act defines “land” as perennially irrigated land, seasonally irrigated land, superior dry crop land and dry crop land. Explanation [1] defines various lands within its sweep.

5. Section 2[17] defines “land” which means land in relation to any period prior to the specified date, land which is used or capable of being used for agricultural purpose and includes sites

of farm buildings appurtenant to such land. From this definition, it would clearly appear that the land which is used or capable of being used for agricultural purpose would be included in the wider definition of the word “land”. Section 3[1][c] on which strong reliance is placed reads as under:-

> “Subject to the provisions of sub-sections [1A] to [1D] [both inclusive], the following lands shall be exempted from the provisions of this Act, that is to say – lands situated in any area which has been specified as being reserved for non-agricultural or industrial development under the relevant tenancy law.”

6. From the fair reading and understanding of the language of clause [c], it would clearly appear that all such lands which are situated in any area which has been specified as reserved for non-agricultural or industrial development under the relevant tenancy law, are exempt from

operation of the Act. Submission of the learned counsel for the petitioner was that any land which is reserved for non-agricultural or industrial development under the relevant tenancy law would be exempt from the operation of the Act, is basically on misreading of the provisions of law. The words “land situated” are qualified by further words “in any area which has been specified”. If the land could be in such area which has been so specified, then, all such lands would be exempt from the operation of the Act. It would not be legal to say that the land which is situated anywhere would be exempted under Section 3[1][c] of the Act. For seeking exemption, one has to show that particular land does not fall within the definition of the land as provided under Section 2[17] of the Act. When the law says that “land which is used or capable of being used for agricultural purpose” would come within the mischief of the word “land”, then one has to prove that because of the change in the land use for the purpose, the land cannot be used or in

future cannot be used for agricultural purpose.

7. The main plank of the argument of the learned counsel for the petitioner is entry no. 99, wherein, it is stated that the land is recorded as non-agricultural land in view of the order dated 6.1.54 passed in NA 44/1.

8. For the reasons best known to the petitioner, she did not produce some original records when the matter was pending before the Mamlatdar. For the reasons best known to the petitioner, she did not obtain certified copy of the order dated 6.1.54 in the year 1976 knowing full well that her strong reliance was on the order dated 6.1.54 and exemption can be granted in her favour if she proved that the land was recorded as non-agricultural land. If in the year 1976, she could produce original records or obtain certified copy of the original records or produce the same before the Mamlatdar, then certainly balance could tilt in her favour, but after lapse of long many years, she made an application to the Collector for grant of certified copy. The Collector, vide his letter

dated 23.4.93 informed the petitioner that the records being 30 years old were destroyed. On this letter strong reliance is placed to convince the Court that the original order is not traceable and as the petitioner is unable to file copy of the original order, secondary evidence be taken on record. At the High Court level, for the first time, letter of the Collector was submitted. The petitioner nowhere says that why certified copy could not be obtained within 30 years from 6.1.54 or immediately after the orders were passed by the Mamlatdar against the interest of the petitioner. The Mamlatdar had passed his first order on 23.1.85. The petitioner all through had been relying upon entry made in the register maintained by the Talati, she never submitted before any Court that she was ready and willing to produce copy of the original order. If she committed lapse or blunder there, then at this stage, the Court would not help the petitioner because she has already missed the bus.

9. So far as the question of secondary evidence and

its acceptance in evidence is concerned, one must look into the provisions of Sections 64 and 65 of the Indian Evidence Act, 1972. Section 64 of the Evidence Act provides that documents must be proved by primary evidence except in cases mentioned beyond Section 64. In a given case, certified copy issued by a competent court or authority or Tribunal would be taken to be original for purposes of its production in evidence. If such certified copy is not produced and any secondary evidence to prove some document is required, then provisions of Section 65 would apply. Section 65 provides that secondary evidence may be given of the existence, condition, or contents of a document in particular cases. Once a party proposes to rely upon the secondary evidence, then such party has to take appropriate steps either under Section 66 or has to convince the court that the document would be deemed to be original within the meaning of Section 74 of the Act. Production of the secondary evidence is not proof of that evidence or proof of the said fact. One has to

convince the Court that they are unable to produce the original and under the circumstances, the secondary evidence be taken on record. Section 66 of the Evidence Act provides that secondary evidence of the contents of the documents referred to in section 65[a], shall not be given unless the party proposing to give such secondary evidence has previously given to the party in whose possession or power the document is, such notice to produce it as is prescribed by law; and if no notice is prescribed by law, then such notice as the Court considers reasonable under the circumstances of the case. The document, in the present case is the order passed by some competent authority. Production of certified copy of such order would have sufficed in case such certified copy was produced. If certified copy could not be produced, then the petitioner was obliged to issue notice to the government to produce the original records so that such original was produced before the court and copy was kept in the records.

10. In the present case, permission to produce the secondary evidence could only be given by the first court, i.e. the Mamlatdar. If to fill up the lacuna, the petitioner has obtained the letter dated 23.4.93, then the same would not provide any solace in favour of the petitioner, because, this letter was obtained almost after 17 years from the date the petitioner had filed her return/form disclosing the land.

11. No reliance can be placed upon the letter dated 23.4.93, because the petitioner has nowhere stated that why immediately on passing of the order dated 6.1.54, she could not apply for the copy or why she could not apply for the copy in the year 1976 when she was required to file form and was knowing well that she has to claim exemption in accordance with the order dated 6.1.54. The entry from the register of the Talati would not be sufficient to convince this Court that the land was non-agricultural land. It is also to be seen from the records that in relation to many other parcels of land, the petitioner could show to the authority that she

was possessing some order and was paying revenue in accordance with non-agricultural assessment, unfortunately for the land in dispute, she did not file any receipt to show that she was paying revenue in accordance with non-agricultural assessment. It has also come on the record that the land was used for cultivation. Mamlatdar had given cogent reasons for holding that the land was agricultural land. In the opinion of this Court, the Mamlatdar, for the reasons stated in his order and for the reasons aforesaid cannot be held to have committed any wrong and the appellate authority was justified in confirming the order.

12. The petition deserves to and is accordingly dismissed. Rule is discharged. No costs. Interim relief, if any, is vacated.

[R.S. GARG, J.]

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